Supreme Court of the United States

OCTOBER TERM, 1948

No. 706

COURT SQUARE BUILDING, INC.,

Petitioner,

vs.

THE CITY OF NEW YORK,

Respondent.

BRIEF OF THE CITY OF NEW YORK IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

May 10, 1949.

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Preliminary Statement

Petitioner, Court Square Building, Inc., seeks review of an order of the Court of Appeals of the State of New York, which modified an order of the Appellate Division of the Supreme Court of the State of New York, First Department, and of an order entered thereon in the Supreme Court of the State of New York on February 11, 1949 (R. 405-406, 418-420).

Reported Below:

298 N. Y. 380;
273 App. Div. 441.

Summary Statement of Facts

Petitioner is the owner of a 23-story office building in the City of New York. Since 1935, the respondent has occupied the lower seven floors of the building for the use

of the Municipal Court of the City of New York, consisting of court rooms, jury rooms, clerks' offices, record rooms, and related quarters (R. 262-268).

The premises were occupied by the City under leases which were renewed from time to time. Between May 1, 1942 and April 30, 1945, the rent reserved was $123,300 per annum (R. 15-21). In May, 1944, the Director of Real Estate of the Board of Estimate of the City of New York entered into negotiations with the petitioner for a renewal of the lease. Following a demand by petitioner for a new annual rent of $173,850 for a three-year lease, the Director of Real Estate tried, without success, to find other quarters for the Municipal Court (R. 253-254). In August, 1944, petitioner offered to renew the lease for three years at an annual rent of $163,850, and on the recommendation of the Director of Real Estate, the Board of Estimate, on October 19, 1944, adopted a resolution authorizing him to execute a renewal of the lease on those terms. The renewal lease was executed on October 31, 1944, effective May 1, 1945 (R. 27-29).

On March 28, 1945, the New York State Legislature enacted the Emergency Business Space Law (L. 1945, ch. 314), effective on that date. So far as is pertinent here, its provisions are as follows: Any rent which exceeds the emergency rent is presumed to be unjust, unreasonable and oppressive (§3). Emergency rent is defined as the rent payable under an agreement in force on June 1, 1944, plus 15 per cent thereof (§2, subd. c). Within twenty days after the effective date of the statute, a landlord is required to furnish each tenant with a statement setting forth the amount of the tenant's emergency rent (§3).

Under §4, a landlord who claims that the emergency rent is inadequate may present a petition to the Supreme Court of the State of New York for the purpose of obtaining a rent in excess thereof. It provides that a net return of six per cent on the fair value of the property plus two per cent for amortization of mortgage principal is presumed to be reasonable. If the income from the property is insufficient to provide a fair net return, the Court may fix a rental to be paid by the tenant, in excess of the emergency rent and proportionate to the gross rentals from the property.

Under §5, if the tenant is in possession under an unexpired lease, the landlord is entitled to either the rent reserved in the lease or the emergency rent, whichever is less.

On April 13, 1945, petitioner served a notice on The City of New York, pursuant to §3, setting forth the amount of the City's emergency rent (R. 11, 31-32). The emergency rent amounted to $141,795 per annum, which was 115 per cent of the 1944 rent. The City paid the emergency rent for May, 1945, which was acceped by the petitioner, without prejudice.

On May 2, 1945, petitioner instituted this proceeding pursuant to §4 of the statute, in which it sought to have the City's rent fixed at the sum of $163,850 per annum, as in the renewal lease. The petition alleged that the emergency rent was not a reasonable rental and that the emergency rent statute had "no application to the rights and obligations existing between the Petitioner and The City of New York" (R. 11-12).

At the trial in the Supreme Court of the State of New York, petitioner contended that the rent statute was inap-

plicable because (1) the premises occupied by the City were not business space, (2) because the City could, in the exercise of the power of eminent domain, acquire a leasehold of the premises, and (3) because the statute would be unconstitutional if given retroactive effect so as to affect the renewal lease which was executed prior to March 28, 1945, the effective date of the statute (R. 78-83). The Court held that the statute was a valid exercise of the State's police power and that it was applicable to the space occupied by the City. It held that the City's emergency rent was fair and reasonable and, accordingly, dismissed the petition (R. 76, 83).

The Appellate Division of the Supreme Court, First Department, modified the order of the Supreme Court, New York County and fixed the City's rent at the sum of $155,265.72 per annum (R. 406). With respect to the applicability of the statute, it said (R. 1222):

> "We think that the statute extends to the present tenancy and by definition includes space of the kind involved in this proceeding (Unconsolidated Laws, §552) [L. 1945, ch. 314 §2(a)]. Its provisions are applicable to the renewal lease made by the parties prior to the effective date of the statute. (See *Twentieth Century Associates* v. *Waldman*, 294 N. Y. 571.)"

The Court of Appeals held that the City's rent had been incorrectly computed by the Appellate Division and fixed the rent at $143,560.92 per annum (R. 432) Holding that the statute was applicable to the City's tenancy the Court said (R. 426-427):

> "The landlord's first contention upon this appeal is that the Business Rent Control Law does not

apply to the City of New York as a tenant. In support of that position it is argued that, inasmuch as a lease was executed prior to the effective date of the statute (March 28, 1945), the rent control law cannot be held applicable for it would then constitute a violation of the constitutional prohibition against impairing the obligation of a contract. The same argument was advanced in *Twentieth Century Associates* v. *Waldman* (294 N. Y. 571) where this court considered the constitutionality of the Commercial Rent Control Law (L. 1945, ch. 3). The statute there involved differed from the statute now before us in that it covered different types of property, had a different effective date and a different date for the freezing of rents. In other respects the Commercial Rent Control Law and the Business Rent Control Law are alike."

And continuing:

"In the *Twentieth Century Associates* case (*supra*) the Commercial Rent Control Law was held to be a constitutional exercise of the police power and the statute there being considered was held to be applicable to leases executed prior to its effective date. We regard the rule of that case as decisive of the challenge upon this appeal by the petitioner-landlord to the constitutional validity of the Business Rent Control Law. In that connection we note that the enactment of the statute last mentioned was prompted by the same emergency—arising from the prevalence of the same conditions affecting public welfare—that caused the enactment of the Commercial Rent Control Law (compare L. 1945, ch. 314, §1, with L. 1945, ch. 3, §1)."

The Court held, further:

"The petitioner-landlord also claims that because the city possesses the power of eminent do-

> main, it does not need, and should not be allowed, the protection of the Business Rent Control Law. We find nothing in the statute which indicates that it applies only to certain types of tenants—excluding those, such as cities, which have the right of eminent domain. Indeed, under subdivision (g) of section 8 *id.*—which defines the circumstances in which tenants may be evicted thereunder—it is provided: 'In no event, however, shall any tenant be evicted under or pursuant to the provisions of this subdivision * * * who is * * * an agency of the federal government, the state, the city, or any county'. It would thus seem that the need for specifically excluding 'an agency of * * * the city', when reference is made to the rights under this section of 'any tenant', is an indication that the Legislature, in referring repeatedly to tenants throughout the statute, intended to include municipalities. Accordingly, we are in agreement with Special Term and the Appellate Division that the provisions of the Business Rent Control Law are constitutional and applicable to the city's tenancy here involved."

Thus, all the Courts were in agreement that the space occupied by the City was business space as defined in the statute, and that the amount of rent which the City was required to pay was to be determined in accordance with the statutory formula. Petitioner does not contend that the rent as determined by the Court of Appeals was incorrect (Brief, p. 5).

Petitioner's contention is that the rent statute impairs the obligation of a contract and deprives it of its property without due process of law, and is, therefore, unconstitutional. As we shall show, the statute was attacked upon both these grounds, and its constitutionality upheld, in *Twentieth Century Associates* v. *Waldman, supra,* 294 N. Y. 571, appeal dismissed, 326 U. S. 696, 697.

ARGUMENT

The Emergency Business Space Law (L. 1945, ch. 314) was enacted by the State of New York in the proper exercise of its police power. Its constitutional validity is no longer open to question, in view of the decisions in *Twentieth Century Associates* v. *Waldman*, 294 N. Y. 571, appeal dismissed, 326 U. S. 696, 697 and *Finn* v. *415 Fifth Ave. Co.*, 153 F. (2d) 501, cert. den. 328 U. S. 838.

The statute in question was enacted by the New York State Legislature in March, 1945 (L. 1945, ch. 314). The conditions which prompted its enactment and the evils it sought to overcome are described in §1 in the following language:

> "Unjust, unreasonable and oppressive leases and agreements for the payment of rent for office space and retail stores and other business space in certain cities having been and now being exacted by landlords under stress of prevailing conditions accelerated by the war, and an abundance of eviction proceedings against tenants having been commenced or threatened by landlords, whereby breakdown has taken place in normal process of bargaining and freedom of contract has become an illusory concept, and whereby there have come into existence conditions threatening to obstruct war production, and the production and distribution of essential civilian commodities, and the rendition of essential services, professonal and otherwise, and to divert essential manpower, materials and transportation facilities, and to cause inflation, and all of the foregoing situations and conditions being a threat to the successful prosecution of the war and essential civilian activities, and to the public safety, health, and general

> welfare of the people of the state of New York, it is hereby declared that a public emergency exists, which is increasing in intensity without slackening and without promise of relief so long as present war conditions continue, and that action by the legislature is imperative and will not admit of delay. It is hereby found, therefore, as a matter of legislative determination, that for the duration of such emergency, the establishment of a maximum rent for office and retail store and other business space at a level of fifteen per centum above rents charged on June first, nineteen hundred forty-four or at a level otherwise determined as hereinafter provided, will curb the evils arising from such emergency and will accomplish the purposes hereof. This act is declared to be a measure designed to protect and promote the public health, safety and general welfare, to aid the successful prosecution of the war, and essential civilian activities, and to conserve manpower, essential materials and transportation facilities, and to prevent inflation, and is made necessary by an existing emergency."

Concerning police power statutes of this type, this Court has said (*Veix* v. *Sixth Ward Bldg. & Loan Ass'n.*, 310 U. S. 32, 39 (1940)):

> "In *Home Building & Loan Association* v. *Blaisdell* this Court considered the authority retained by the State over contracts 'to safeguard the vital interests of its people.' The rule that all contracts are made subject to this paramount authority was there reiterated. Such authority is not limited to health, morals and safety. It extends to economic needs as well. Utility rate contracts give way to this power, *as do contractual arrangements between landlords and tenants.*" (Italics supplied.)

In January, 1945, the New York State Legislature enacted the Emergency Commercial Space Law (L. 1945, ch. 3). Except for the types of property involved and the "rent freeze dates", that statute contains provisions identical with the Emergency Business Space Law (L. 1945, ch. 314) involved herein. In *Twentieth Century Associates* v. *Waldman,* 294 N. Y. 571 (1945), appeal dismissed, 326 U. S. 697 (1946), the constitutionality of the commercial rent statute was involved. The plaintiff in that action attacked the retroactive aspect of the statute and claimed that it violated the obligation of a pre-existing contract and that it deprived the plaintiff of its property without due process of law, contrary to the United States Constitution, Art. I, Section 10, and the 14th Amendment.

The Court of Appeals upheld the validity of the statute. After describing the conditions which prevailed prior to the enactment of the statute the Court of Appeals said (297 N. Y., at p. 580):

> "At the close of the last war a similar emergency arose in connection with housing conditions in New York City and a group of statutes were enacted to meet the crisis (L. 1920, chs. 136, 942-943). The validity of these laws was considered by this court and by the Supreme Court of the United States and they were sustained as validly enacted in the exercise of the police powers of the State, notwithstanding 'the impairment of the obligation of the contract of the lessees to surrender possession' of the leased premises (*People ex rel. Durham R. Corp.* v. *La Fetra,* 230 N. Y. 429; *Marcus Brown Co.* v. *Feldman,* 256 U. S. 170, 198; *Levy Leasing Co.* v. *Siegel,* 258 U. S. 242)."

With respect to the due process clause (U. S. Constitution, 14th Amendment) the Court said (294 N. Y. at p. 582):

> "Our conclusion that the act was within the police power of the State disposes of the contention that the act violates the due process clause * * *."

The appeal taken by the plaintiff to this Court was dismissed for want of a substantial federal question, 326 U. S. 697 (1946), the Court citing *Block* v. *Hirsh*, 256 U. S. 135 (1921), *Marcus Brown Holding Co.* v. *Feldman*, 256 U. S. 170 (1921), and *East New York Savings Bank* v. *Hahn*, 326 U. S. 230 (1945).

As we have noted, the statute involved in *Twentieth Century Associates* v. *Waldman, supra,* and the statute in the instant case are identical except for the kinds of property with which they deal. As the Court of Appeals held (*ante,* p. 5), the decision in that case establishes the constitutional validity of the Emergency Business Space Law which is here involved. We note, also, that the business rent law was held not to violate the due process clause in *Finn* v. *415 Fifth Ave. Co.*, 153 F. (2d) 501 (2nd Circ., 1946), cert. den. 328 U. S. 838 (1946).

As in *Twentieth Century Associates* v. *Waldman, supra,* no federal question is involved in the instant case. Petitioner concedes (Petition, p. 7): "It has been repeatedly held that the State in the exercise of its police power has a right to pass laws which affect pre-existing contracts of its citizens." Petitioner then asserts: "That principle, however, has never been extended to include contracts between a citizen and the State or any of the State's subdivisions."

This assertion is contrary to a well-established principle of constitutional law. In 12 Corpus Juris, §603, pp. 991-992, this principle is stated in the following language:

> "All contracts, whether made by the state itself, by municipal corporations, or by individuals, are subject to be interfered with, or otherwise affected by, subsequent statutes enacted in the bona fide exercise of the police power, and do not, by reason of the contracts clause of the constitution, enjoy any immunity from such legislation."

This principle has been reaffirmed by many authorities. *Faitoute Co.* v. *Asbury Park,* 316 U. S. 502 (1942); *Northern Pacific Railway* v. *Duluth,* 208 U. S. 583 (1908); *Manigault* v. *Springs,* 199 U. S. 473 (1905); *State of New York* v. *Gebhardt,* 151 F. (2d) 802 (2nd Circ., 1945), cert. den. *sub nom. Bankers Trust Co.* v. *New York,* 327 U. S. 788 (1946); *Bowen* v. *City of Schenectady,* 136 Misc. 307 (Sup. Ct., Schenectady Co., 1930), aff'd 231 App. Div. 779 (3rd Dept., 1931); *Hite* v. *Cincinnati I. & W. R. Co.,* 284 Ill. 297, 119 N. E. 904 (Sup. Ct., Ill. 1918).

In 1944, when the lease was about to expire, The City of New York was in the same predicament as other tenants of office space. The "abnormal scarcity" of available office space was noted in the report of the City's Director of Real Estate to the Board of Estimate (R. 252-256). The conditions which confronted the City were precisely those which impelled the Legislature to enact the emergency rent laws. As is pointed out by the Court of Appeals (*ante,* p. 6), it is clear from a reading of L. 1945, ch. 314, §8, that the Legislature intended to extend the protection of the statute to agencies of the City when they are occupants of office space.

Under the authorities which we have cited, the statute in question offends neither the contracts clause of the Constitution nor the due process clause of the 14th Amendment.

CONCLUSION

The petition for a writ of certiorari should be denied.

May 10, 1949.

Respectfully submitted,

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